IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 137 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALABHAJI ALIAS VALAMSI DEVAJITHACKER

Versus

SHAKARBHAI V THACKER SINCE DECEASED THRO HER HEIR

Appearance:

1. Civil Revision Application No. 137 of 1987

MR BD KARIA for Petitioner

MR AR THACKER for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/10/2002

ORAL JUDGEMENT

This is a Revision Application preferred under section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the

Rent Act"] against the judgment and order dated 8th January, 1987 passed by the learned District Judge, Kachchh in Regular Civil Appeal No. 15 of 1982. The petitioner before this Court is the Appellant-Defendant.

The premises in question is a residential house situated at Bhuj. The said residential house belonged to one Karsan Kalyan. The plaintiff and the defendant both were tenants in parts of the said residential house. The said residential house was purchased by the plaintiff on 6th September, 1979 by a registered Sale Deed. The notice of attornment was given to the defendant on 13th September, 1979. Even after the purchase of the said residential house by the plaintiff, the plaintiff continued to occupy the part of the house which was in her possession. The defendant also continued to be the tenant of the part of the house in his possession. The monthly rent of the premises in possession of the defendant was Rs. 20/=.

The plaintiff instituted Regular Civil Suit No. 246 of 1980 in the Court of Civil Judge [Jr.Division], Bhuj for recovery of possession of the suit premises and for a sum of Rs. 200/= being the amount of rent due. The suit was contested by the defendant by filing written statement [Exh. 14]. It was denied that the defendant was in arrears of rent. It was stated that in answer to the suit notice, the defendant had paid rent to the plaintiff but the plaintiff did not give receipt for the same. The amount demanded was deposited by the defendant in the Court and had also deposited a further sum being the amount of rent for the months of August, September & October, 1980. The amount of rent due for the months of November, 1980 to March, 1981 was deposited in the Court on 2nd March, 1981. The learned trial Judge was, under the judgment and order dated 24th December, 1981, pleased to hold that the defendant had paid the rent to the plaintiff; that the plaintiff did not issue receipt for the same. However, the Court observed that pending the suit, the defendant had failed to deposit the monthly rent due regularly every month. The learned trial Judge, therefore, held that the defendant was not ready and willing to pay the rent, and accordingly, passed decree for possession but refused the decree for amount of rent demanded.

Feeling aggrieved, the defendant preferred Regular Civil Appeal No. 15 of 1982 in the Court of District Judge, Kachchh in so far as the decree for eviction was passed against him. The plaintiff too preferred cross-objections in so far as the learned trial

Judge had refused the decree for the amount of rent due. The learned District Judge under the impugned judgment 8th January, 1987 dismissed the appeal preferred by the defendant and allowed the cross-objections preferred by the plaintiff. Feeling aggrieved, the defendant has preferred the present Revision Application.

The only question that arises is whether on the date of the suit notice, the defendant was in arrears of rent as mentioned in the suit notice and whether the defendant had paid the amount of rent due in answer to the suit notice within one month from the date of the receipt of the suit notice. The defendant in his oral evidence before the Court has admitted that prior to the date of the suit notice, he had not paid the rent to the plaintiff. Hence, it is an admitted fact that on the date of the suit notice, the defendant was in arrears of rent for six months and more. As to the payment of the rent due in answer to the suit notice, the defendant stated that he had tendered such amount to the plaintiff, while her husband was away at Bombay. At that time, he was accompanied by one Vishrambhai. He had given the rent for seven months. He also paid rent which fell due thereafter but at that time also, the husband of the plaintiff had gone to Bombay and she informed that the receipt would be issued by her husband as and when he returned from Bombay. Thus, it was the case of the defendant that he had paid all the amount of rent due but the plaintiff had not given receipts thereof. However, the said statement made by the defendant has not been believed by the Court below. According to the Court below, the case put up in oral evidence was an improvement in as much as it was not supported by the pleadings of the defendant. Thus, the Court below has come to the conclusion that the defendant failed to pay the rent due within one month from the date of the receipt of the suit notice. All the conditions mentioned in Section 12 (3) (a) of the Rent Act were satisfied. The plaintiff, therefore, was entitled to decree for eviction as envisaged under section 12 (3) (a) of the Rent Act.

The question whether the Court below has correctly appreciated the evidence before it and has arrived at correct conclusion or not is not the question which can be gone into in the present Revision Application in exercise of the revisional jurisdiction. The submission that the defendant was also liable to pay municipal tax and the educational cess; the case, therefore, would not be governed by Section 12 (3) (a) of the Rent Act is not well-founded. There is nothing in

the pleading or evidence of the defendant that he was liable to pay municipal tax or education cess as contended before this Court. Besides, even pending the suit, the defendant failed to deposit the rent due every month regularly. Hence, the Court below cannot be said to have erred in holding that the defendant was not ready and willing to pay the rent and in passing the decree for possession.

In the result, the Revision Application is dismissed with costs. Rule is discharged. Interim stay stands vacated.

[Miss R.M Doshit, J.]

Prakash*